

Before the
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
American Telemedicine Association's Petition)	WC Docket No. 02-60
for Reconsideration of the Rural Health Care)	
Support Mechanism Second Report and Order)	
)	

REPLY COMMENTS OF TIME WARNER TELECOM INC.

Time Warner Telecom Inc. ("TWTC") by its attorneys, hereby submits these reply comments in support of the petition for reconsideration filed by the American Telemedicine Association ("ATA") in the above-captioned docket.¹ TWTC's experience in providing telecommunications services to several rural health care facilities in Hawaii that will lose the benefit of support from the Federal Communications Commission's ("FCC's" or "Commission's") rural health care program upon expiration of the three year extension for previously eligible facilities powerfully demonstrates the need for the relief sought by ATA in its petition.

I. BACKGROUND

In the Telecommunications Act of 1996, Congress mandated that telecommunications carriers provide telecommunications services that are "necessary for the provision of health care services . . . including instruction relating to such services" to any health care facility that "serves persons who reside in rural areas" at rates that are reasonable when compared to rates charged

¹ See *Comment Sought on American Telemedicine Association's Petition for Reconsideration of the Rural Health Care Support Mechanism Second Report and Order*, Public Notice, WC Docket No. 02-60 (2007).

for similar services in urban areas in the same state.² Congress also directed the FCC to enhance access to advanced telecommunications and information services for health care providers.³

In 1997, the FCC established the rural health care support mechanism, and, in so doing, adopted a definition of what constitutes a rural area for purposes of receiving support.⁴ In 2004, the FCC released its *Rural Health Care Support Mechanism Second Report and Order*,⁵ which in part established a new definition of rural area.⁶ The FCC stated that it adopted the *Second Report and Order* in order to “improve significantly the ability of rural health care providers to respond to the medical needs of their communities, provide needed aid to strengthen telemedicine and telehealth networks across the nation, help improve the quality of health care services available in rural America, and better enable rural communities to rapidly diagnose, treat, and contain possible outbreaks of disease.”⁷

The Commission recognized that some previously eligible rural areas would lose eligibility as a result of the adoption of the new definition or because of the growth of nearby metropolitan areas.⁸ It therefore created a three year transition period during which all health care providers that had received funding commitments since the start of the program would

² 47 U.S.C. § 254(h)(1)(A).

³ 47 U.S.C. § 254(h)(2)(A).

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997).

⁵ *Rural Health Care Support Mechanism*, WC Docket 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613 (2004) (“*Second Report and Order*”).

⁶ *Id.* ¶ 11.

⁷ *Id.* ¶ 2.

⁸ *Id.* ¶ 23.

continue to receive support. As the Commission stated in both the *Second Report and Order* and in the Public Notice that initiated the instant proceeding, the Commission also established the transition to allow it “time to review the effect of this definition.”⁹

In its petition, the ATA requests that the FCC grandfather rural sites that were eligible for rural health care support under the 1997 definition of rural area but are no longer eligible under the 2004 definition. For the reasons discussed herein, the Commission should grant this request.

II. DISCUSSION

TWTC provides 28 T1 lines to 20 hospitals in the State of Hawaii that currently receive support from the rural health care support mechanism. Each of the 20 hospitals is associated with an inter-hospital telehealth telecommunications network that maintains its system servers in Honolulu on the island of Oahu. The servers store all of the health care facilities’ emergency and operating room data. TWTC’s services allow health care facilities located on neighboring islands to connect *via* the telehealth network to their system servers in Honolulu. In addition, the network facilitates video conferencing through which physicians at the 20 supported hospitals can consult with medical experts and specialists and jointly examine images (*e.g.* X-Rays, MRIs, CT scans, etc.) that would otherwise have to be mailed between locations to reach an expert qualified to read them. The telehealth network also facilitates the provision of cost effective continuing education and administrative meetings, and it supports business functions by providing access to voice, internet, file sharing and data storage services.

⁹ *Id.* ¶ 23. See also, *Comment Sought on American Telemedicine Association’s Petition for Reconsideration of the Rural Health Care Support Mechanism Second Report and Order*, Public Notice (stating that the transition period would “allow the Commission time to review the effect of the new definition.”).

Under the new definition of rural, six of the 20 health care facilities that currently receive assistance from the rural health care support mechanism will not be eligible to receive support after the expiration the three year extension of eligibility for previously eligible institutions. The consequences for rural communities in Hawaii of eliminating subsidies to these six facilities offer concrete evidence as to why the Commission should grant the ATA petition.

First, each of the six hospitals at issue actually “serves persons who reside in rural areas,” as required by Congress in the 1996 Telecommunications Act. The six hospitals affected by the definition change are Hilo Medical Center, Maui Memorial Medical Center, Hilo Bay Clinic, Keaau Family Health Center, Maui Veterans Affairs (“VA”) Community Based Outpatient Clinic, and Hilo VA Community Based Outpatient Clinic. The Hilo Medical Center and Maui Memorial Medical Center are the only two acute treatment centers for people on the east half of the Big Island of Hawaii as well as for people on the islands of Maui, Lanai, and Molokai. Significant portions of Hawaii County (15 tracts) are designated as rural under the new definition. Similarly, significant portions of Maui County (19 tracts) are designated as rural under the new definition, including island of Lanai. The island of Molokai is Kalawao County, which is now designated as entirely rural. Residents of all of these designated rural areas depend on the Hilo Medical Center and Maui Memorial Medical Center for acute treatment.

The Hilo Bay Clinic, Kea’au Family Health Center, Maui VA Community Based Outpatient Clinic, and Hilo VA Community Based Outpatient Clinic are all small long-term care facilities that serve local rural communities. The Hilo Bay Clinic provides “healthcare, dental and outreach services to the rural underserved within Hilo, Puna, Ka’u and Kea’au districts.” This facility focuses on providing “comprehensive primary care services including mental health counseling, family planning, prenatal care, dental and support services” to “rural underserved”

communities.¹⁰ Similarly, the Kea'au Family Health Center is a small satellite of the Hilo Bay Clinic that encourages uninsured patients to receive treatment. It is located in Kea'au, a low-income rural area with only 2,010 people or 608 households.¹¹ The Maui VA Community Based Outpatient Clinic is the only VA facility serving veterans in the county of Maui, of which at least 19 tracts are designated as rural under the new definition. Veterans in such rural areas likely have no choice but to rely on the Maui VA Community Based Outpatient Clinic. Similarly, the Hilo VA Community Based Outpatient Clinic is the only outpatient VA facility serving veterans on the entire eastern half of the Big Island of Hawaii, in which at least nine tracts are designated as rural under the new definition.

Thus, while these facilities continue to serve rural communities, they are identified as urban under the current rules. They are examples of the types of entities that fall through the cracks of the new definition and require further examination by the Commission.

Second, loss of eligibility of six of the twenty facilities served by TWTC in Hawaii will significantly affect the 14 hospitals that continue to be defined as rural. As mentioned, the 20 Hawaii hospitals that TWTC serves altogether utilize 28 T1 lines with assistance from the rural health care support mechanism. The loss of eligibility under the new definition of rural would impact 13 of those 28 lines. Practically, that would result in a loss of almost 40 percent of the support on which these 20 hospitals currently depend to interconnect.¹²

¹⁰ *The Bay Clinic, Inc.*, The Pulama Project, *available at* <http://www.pulamaproject.org/anewsite/bayclinic.htm> (last visited May 11, 2007).

¹¹ *Keauu Family Health Center*, Ke Kukui Healing Island Resource Guide, *available at* <http://www.kekukui.net/details.cfm/CategoriesListingsID/1885/> (last viewed May 11, 2007).

¹² The rural health care fund currently covers approximately two-thirds of TWTC's charges for services rendered to the 20 hospitals at issue.

Further, of the 20 currently supported hospitals served by TWTC, 10 are members of the Hawaii Health Systems Corporation (“HHSC”), a public hospital system organized as a benefit corporation of the State of Hawaii.¹³ The HHSC is made up of 12 hospitals and has, by state law, a budget of close to \$350 million and “the responsibility of organizing Hawaii’s state hospitals into an integrated, efficient system.”¹⁴ Thus, the 12 hospitals that comprise the HHSC have an integrated financial structure in which costs to one hospital affect the budget of the other hospitals. Of the 10 HHSC hospitals that TWTC serves, two, Hilo Medical Center and Maui Memorial Medical Center, are no longer designated as rural under the new definition. The services that TWTC currently provides to those two facilities receive about 30 percent of the total subsidies received by the 10 HHSC hospitals that TWTC serves.¹⁵ Discontinuing that funding to the two hospitals that are no longer considered rural will require either that those facilities cease the expert consultations, distance education, and other services for which they currently use the T1 lines or that the system make up the cost difference from the HHSC funding pool, thereby reducing the funding available to the other health care facilities located in areas classified as rural.

The 10 remaining supported hospitals TWTC serves are part of the State of Hawaii Telehealth Access Network (“STAN”), which is a public-private telehealth and telemedicine

¹³ *History*, Hawaii Health Systems Corporation, *available at* http://www.hhsc.org/HHSC_History.htm (last viewed May 11, 2007).

¹⁴ *Id.*

¹⁵ The HHSC member entities are: Kohala Hospital, Kauai Veteran’s Memorial Hospital, Samuel Mehelona Memorial Hospital, Kula Hospital, Hilo Medical Center, Kau Hospital, Kona Community Hospital, Hale Holoa Hamakua, Lanai Community Hospital, and Maui Memorial Medical Center. HHSC also includes two hospitals on Oahu which have historically been designated as urban facilities.

network.¹⁶ The network “enables health care providers, educational institutions, and government agencies to interconnect clinical, financial, and management information systems; clinical telemedicine systems and applications; continuing health and medical education and training; and community and patient information services.”¹⁷ The four STAN facilities that will no longer receive support under the new definition of rural are the Hilo Bay Clinic, Kea’au Family Health Center, Maui VA Community Based Outpatient Clinic, and Hilo VA Community Based Outpatient Clinic. Removing these four facilities from the STAN network will limit the ability of other six health care providers that are still designated as rural to interact with or learn from them.

Third, Hawaii’s unique topography and composition of islands make it essential that all its hospitals be able to communicate in order to provide quality services to the state’s rural communities. The rural health care support mechanism allows these facilities to connect to Honolulu, where, as described above, their servers are located, at the rates that would be paid if they were located on the same island. The differences between on-island telecom rates and inter-island rates are significant because inter-island telecom transport services are provided via inter-island submarine fiber-optic cable systems. On a mile-to-mile basis, these inter-island submarine systems are generally significantly more expensive to build and operate than terrestrial fiber networks.

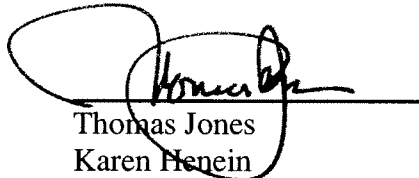
¹⁶ The STAN facilities are: Hana Community Health Center, Hilo Bay Clinic, Kau Family Health Center, Pahao Family Health Center, Kea’au Family Health Center, Kauai VA Community Based Outpatient Clinic, Maui VA Community Based Outpatient Clinic, Hilo VA Community Based Outpatient Clinic, and Kona VA Community Based Outpatient Clinic.

¹⁷ *Main Page*, State of Hawaii Telehealth Access Network, available at <http://www.stan.tipg.net/> (last viewed May 11, 2007).

III. CONCLUSION

TWTC respectfully requests that the FCC grant the ATA's petition. Of course, the FCC may be concerned about granting indefinite support to areas that may one day become urban. Thus, in the alternative, the FCC could, at minimum, extend the transition period another three years or until the 2010 census data has been incorporated into the current rural/urban formula and rural health care support eligibility list compiled by USAC. This will give the FCC and the public time to fully consider the viability of a standard that the FCC can apply to areas that might be considered urban by virtue of the new definition but in reality serve rural communities. This will also give the Commission time to consider how to treat hospital corporations like the HHSC that complicate the definition of rural which treats health care facilities as stand-alone entities.

Respectfully submitted,



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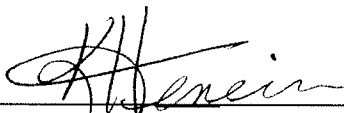
ATTORNEYS FOR TIME WARNER
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May 14, 2007

CERTIFICATE OF SERVICE

I, Karen Henein, hereby certify that on this 14th of May 2007, a copy of the foregoing reply comments was served by first-class mail on the following:

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